

REMARKS

The application included claims 1-24 prior to entering this amendment.

The Applicant amends claims 1, 2, 5-18, and 20-23 and cancels claims 3, 4, 19, and 24 without prejudice.

The Applicant adds claims 25-28. No new matter is added.

The application remains with claims 1, 2, 5-18, 20-23, and 25-28 after entering this amendment.

Restriction Requirement

The Examiner required restriction of claims identified as Group I, to claims 1-11, and Group II, to claims 12-24. Groups I and II are indicated as belonging to classes 375/316 and 375/349, respectively. The restriction is traversed; however, Applicant hereby elects claims 12-24 identified as group II.

Whereas the restriction requirement is traversed, Applicant amends claims 1, 2, 5-18, and 20-23 to expedite prosecution, and without prejudice with regard to pursuing the claims as previously presented or in other forms in a continuation or other application. The Examiner suggested that claims identified as Groups I and II are unrelated (page 2, sections 1 and 2 of the Office Action). According to the Examiner's basis for restriction, two prongs must be satisfied for a proper restriction under MPEP 806.04 and 808.01.

- 1) the inventions are not disclosed as capable of use together and
- 2) they have different modes of operation, different functions, or different effects.

The Examiner distinguished the two groups of claims on the basis of one receiving a plurality of transmitted symbols and the other as including a MIMO system (page 2, sections 1 and 2 of the Office Action). Applicant notes that independent claims 1 and 12 both recite "a composite signal indicative of a plurality of symbols." Claim 1 further recites "a plurality of receiving elements." Claims 12 and 21 recite multiple input multiple output (MIMO) systems or architecture. The designation of Groups I and II into separate subclasses appears to Applicant to be arbitrary.

Even assuming, for argument's sake, that the Examiner is correct that the claims in Groups I and II have different modes of operation, different functions, or different effects

according to the second prong, the Examiner has nevertheless failed to allege that embodiments are disclosed as being incapable of use together as required by the first prong. By the use of the conjunction “and,” both of the prongs must be met in order to support the present restriction requirement. As the Examiner has failed to provide support for any suggestion that the embodiments are incapable of use together, Applicant respectfully submits that the grounds for restriction are improper.

Class 375, subclass 316 “Receivers” (as applied to claims 1-11) is directed to an apparatus to decode, demodulate, or recover transmitted intelligence. Class 375, subclass 349 “Plural Signal Paths in Receiver” (as applied to claims 12-24) is indented to subclass 346 which is itself indented to previously mentioned subclass 316. Applicant respectfully submits that claims related by associated/indented subclasses would be capable of use together, contrary to the requirement for a proper restriction.

Generic Linking Claims

In the alternative, Applicant respectfully submits that claims 1-11 would operate as generic linking claims to claims 12-24 since subclass 349 identifies a type of receiver of subclass 316. Accordingly, Applicant respectfully submits that generic linking claims would be capable of use together, contrary to the requirement for a proper restriction. Applicant respectfully submits that concurrent examination of claims 1-11 together with claims 12-24 would be appropriate based on sharing generic linking claims.

The restriction is traversed at least for the above reasons. The Applicant explicitly traverses the present restriction to preserve the right to file a petition in the event that the Examiner affirms, in part or in whole, the present restriction requirement.

New Claims

The Applicant adds new claims 25-28 for consideration. No new matter is added.

CONCLUSION

Applicant respectfully requests reconsideration and examination of all pending claims 1, 2, 5-18, 20-23, and 25-28. The Examiner is encouraged to telephone the undersigned if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,
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